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Letter dated 16 April 2002 from the Permanent Representative of Guatemala to the United Nations addressed to the Chairman of the Committee

In accordance with paragraph 6 of resolution 1390 (2002), I am pleased to submit herewith the report prepared by the Government of Guatemala (see annex).

Please do not hesitate to communicate with me, should you require any clarification or wish to make any comments.

(*Signed*) Gert **Rosenthal**
Permanent Representative

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Annex to the letter dated 16 April 2002 from the Permanent Representative of Guatemala to the United Nations addressed to the Chairman of the Committee

Report on the steps taken by the Government of the Republic of Guatemala to implement Security Council resolution 1390 (2002)

Introduction

The Government of the Republic of Guatemala is submitting this report pursuant to paragraph 6 of Security Council resolution 1390 (2002), which requests all States to report to the Committee on the steps they have taken to implement the resolution.

Guatemala has legislation to suppress terrorist activities in general and other related acts; this legislation could be used against Usama bin Laden and his organization if necessary, and also against any other specific terrorist organization or group.

The information in this document describes the legislative and administrative measures that are consistent with resolution 1390 (2002), within the framework of the individual, civil and political safeguards inherent to a democratic society.

Paragraph 2. Decides that all States shall take the following measures with respect to Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them, as referred to in the list created pursuant to resolutions 1267 (1999) and 1333 (2000) to be updated regularly by the Committee established pursuant to resolution 1267 (1999) hereinafter referred to as "the Committee";

(a) Freeze without delay the funds and other financial assets or economic resources of these individuals, groups, undertakings and entities, including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensure that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly, for such persons' benefit, by their nationals or by any persons within their territory.

All legislative and/or administrative measures they have taken to freeze the funds and other financial assets or economic resources of the individuals, groups, undertakings and entities referred to in the list mentioned in paragraph 2 of resolution 1390 (2002), including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction and to ensure that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly, for such persons' benefit, by their nationals or by any persons within their territory.

If the authorities of a State have identified and frozen funds and other financial assets or economic resources of the individuals, groups, undertakings and entities as referred to in the list, they should provide the Committee with relevant information, such as types of assets frozen, account numbers and monetary value of the assets frozen.

Pursuant to article 133 of the Constitution, the Superintendency of Banks is responsible for supervising and inspecting banks, credit institutions, financial companies, surety entities and other bodies stipulated in the legislation.

By virtue of this mandate and on the basis of the lists issued by the Security Council, the Superintendency of Banks has conducted an investigation to establish whether the individuals or entities that appear on the lists have any relationship or business with the national financial system. As a result of these investigations, it has been determined that these individuals have not conducted operations or held financial assets within Guatemala's financial system.

If the existence of assets or resources of any individuals connected with the lists issued by the Security Council is detected in our financial system in the future, Guatemala has a legal framework that would allow it to freeze such funds.

Regular legislation

Pursuant to article 278 of the Code of Criminal Procedure and article 530 of the Code of Civil and Mercantile Procedure, at the request of the Office of the Public Prosecutor, a competent judge may order an urgent precautionary measure for the seizure of property and other resources, including funds deposited in bank accounts. Such measures may be applied if it is discovered that funds deposited in banks of the national system are associated with persons who collaborate with terrorism; the action produces the same result as freezing assets, because once it takes effect, the holder of the account cannot use the resources.

In the specific instance of cases related to the laundering of money or other assets, article 12 of the Act Against the Laundering of Money or Other Assets, Legislative Decree 67-2001, establishes that, in case of *periculum in mora*, the Office of the Public Prosecutor may order the confiscation, seizure or freezing of property, documents and bank accounts, which must be approved immediately by the competent judge or court.

In addition, article 13 of this act establishes a system for the Office of the Public Prosecutor to have custody of the confiscated property.

International legislation

As a member of the United Nations, of the Organization of American States and of many other regional and international organizations and forums, Guatemala is a signatory to a large number of bilateral and multilateral treaties, conventions and agreements which, once they have been adopted and ratified by Guatemala, are incorporated into domestic law and have the force of law. In this respect, we should mention:

- International Convention for the Suppression of Financing of Terrorism

The instrument of ratification was deposited with the Secretary-General of the United Nations on 12 February 2002.

Article 8 establishes the measures that States Parties must take for the control, identification, detection, freezing and forfeiture of funds and other financial assets related to acts of terrorism.

(b) **Prevent the entry into or the transit through their territories of these individuals, provided that nothing in this paragraph shall oblige any State to deny entry into or require the departure from its territories of its own nationals and this paragraph shall not apply where entry or transit is necessary for the fulfilment of a judicial process or the Committee determines on a case-by-case basis only that entry or transit is justified.**

All measures they have taken to prevent the entry into or the transit through their territories of the individuals as referred to in the list mentioned in paragraph 2 of resolution 1390 (2002).

According to the Immigration Act, Legislative Decree 95-98, the Department for Immigration is responsible for ensuring that foreigners who stay in Guatemalan territory do so in accordance with the provisions of this act.

This Department has conducted an investigation in order to establish whether the individuals whose names appear on the list issued by the Security Council have entered or passed in transit through Guatemalan territory and it has been determined that, to date, none of those individuals has entered or passed in transit through Guatemala.

Also, controls at the legally authorized border points have been heightened in order to prevent the entry into or transit through Guatemala of the individuals appearing on the lists. To this end, the following administrative and operational measures, among others, have been taken:

- The Department for Immigration is consulted about any request for a visa, and checks it against the Security Council lists.
- A permanent link to the Internet has been established in order to obtain information on individuals who plan travel to Guatemala before they leave their countries of origin.
- A satellite link is being set up.
- The control of private flights has been heightened.
- There is close coordination on immigration policies with the Ministry of Foreign Affairs, through the Department of Consular Affairs.

Administrative legislation

- Immigration Act, Legislative Decree 95-98

This Act establishes that foreigners who violate the domestic laws of Guatemala by committing an offence during their stay, when permitting them to stay in Guatemala is not in the national interest, as determined by the Department for Immigration, will be punished by expulsion to their countries of origin (Immigration Act, art. 114).

The Department may prohibit or terminate the stay of foreigners for reasons of public order, national interest or State security.

The act provides that immigration controls include the organization and coordination of services relating to nationals' and foreigners' entry into and departure from the territory of the Republic through verification of their documents and consideration of problems that might be caused by such travel. It also includes

monitoring of compliance with the legislation regarding foreigners' stay and activities in Guatemala (Immigration Act, art. 87).

It is unlawful for foreigners to remain in Guatemala if any of the following situations apply: (1) entry into the country at a point not authorized for the purpose; (2) entry without passing through immigration control; (3) failure to comply with the regulations governing entry or stay under the Immigration Act; or (4) continued presence in the country after expiry of the authorized time period (Immigration Act, art. 89).

Criminal law

• Penal Code, Legislative Decree 17-73

The Guatemalan Penal Code establishes the following offences, which are penalized by prison sentences ranging from one to 50 years and additional financial penalties:

(a) Interference: among the "Offences which compromise the foreign affairs of the State", article 371 defines the offence of interference, stating: "Anyone who, in Guatemalan territory, carries out activities designed to modify the political system of another State through violence shall be sentenced to one to three years' imprisonment and a fine".

(b) Hostile acts: article 372 of the Penal Code defines the offence of hostile acts as: "Anyone who, without the approval of the Guatemalan Government, commits hostile acts against another State which might give rise to a declaration of war against Guatemala shall be sentenced to two to eight years' imprisonment. Anyone who, under the same circumstances, exposes Guatemalans to potential humiliation or reprisals against their person or property or alters the friendly relations between the Government of Guatemala and a foreign Government shall also be subject to such a sentence. The sentence shall be doubled if the said hostile acts result in war."

(c) Offences of international scope: the Penal Code (Book II, Title XI, Chapter IV) establishes "Offences of international scope", including the following which are linked to terrorism: genocide (art. 376), incitement to genocide (art. 377), death of a foreign head of state (art. 379) and human rights violations (art. 378), which carry heavy sentences of between 5 and 50 years' imprisonment. In the punishment of such offences, the international legal principle of reciprocity shall prevail.

Special legislation on extradition

Guatemala recognizes the right of asylum which it grants in accordance with international practice. Extradition is governed by the provisions of international treaties (Constitution of the Republic of Guatemala, art. 27), among which are those relating to:

(a) Extradition for acts of terrorism taking the form of crimes against persons and related extortion.

(b) Extradition for crimes taking the form of terrorist bombings.

(c) Extradition for crimes taking the form of the financing of terrorism.

(d) Extradition for crimes against the safety of civil aviation.

Principle of reciprocity: extradition may be attempted or granted only for common crimes. In cases of extradition under international treaties, it may be granted only if reciprocity exists (Guatemalan Penal Code, art. 8, Legislative Decree 17-73).

(c) Prevent the direct or indirect supply, sale and transfer, to these individuals, groups, undertakings and entities from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related materiel of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned and technical advice, assistance, or training related to military activities.

All measures they have taken to prevent the direct or indirect supply, sale and transfer to these individuals, groups, undertakings and entities from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related materiel of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned and technical advice, assistance, or training related to military activities.

The Weapons and Ammunition Act, Legislative Decree 39-89, establishes that the Department of Arms and Munitions Control (DECAM), attached to the Ministry of Defence, is the body responsible for authorizing, registering and controlling the import, manufacture, purchase and sale, donation, export, storage, customs clearance, transport and bearing of weapons and ammunition.

The steps taken to comply with resolution 1390 (2002) include the transmittal of the Security Council lists related to international terrorism to the Ministry of Defence and the Ministry of the Interior; it has been verified that, to date, no weapons or ammunition have been supplied, sold or transferred either directly or indirectly to any persons on those lists. Each sales transaction for weapons and ammunition is checked against the list issued by the Security Council.

In Guatemala, defensive weapons and ammunition are sold by the various private companies that deal in weapons, and these companies are authorized, controlled and monitored by the Department of Arms and Munitions Control of the Ministry of Defence.

Offensive weapons, and also vehicles, equipment, materiel and spare parts are bought, through the Ministry of Defence, from foreign companies or armies, for the exclusive use of the Guatemalan Army.

Offensive weapons for the civilian security forces are allowed, once they have been approved by the General Staff of the Armed Forces.

In special cases when individuals need to possess and bear offensive weapons for reasons of security, permission is granted, once clearance has been given by the General Staff of the Armed Forces.

The Ministry of Defence has a plant that produces ammunition exclusively for rifles, which are the Army's basic weapon. It also has a military industry that produces uniforms and boots for the entire Army and which sometimes supplies Central American countries, upon request.

Technical advice, assistance or training related to military activities is only offered to army personnel at the training centres for recruits in the various military commands, to individuals in the country's reserve forces, and at the basic and advanced professional training centres for Guatemalan army officers and, in some cases, officers from other countries, under an exchange programme with friendly armies, all of which are under the control and responsibility of the Ministry of Defence.

Also the Weapons and Ammunition Act contains general prohibitions for individuals to manufacture, import, export, possess and bear offensive firearms, blades, explosives, chemical weapons, biological weapons, atomic weapons, mines, experimental weapons, sound reducers, suppressors or silencers and the appropriate ammunition to be used with them, and also devices that allow a weapon to be fired while hidden such as attaché cases, pencil cases or books, ammunition that is exclusively for military use and ammunition that has been altered or poisoned with natural chemical products.

Administrative legislation

- Weapons and Ammunition Act, Legislative Decree 39-89.
- Decree-Law 123-85 "Government Monopoly Act".

Criminal law

Article 245 of the Guatemalan Constitution stipulates that "The organization and operation of armed groups not regulated by the laws and regulations of the Republic are a punishable offence". Pursuant to this constitutional provision, the Congress of the Republic has enacted the following legislation:

- Weapons and Ammunition Act, Legislative Decree 39-89

The Weapons and Ammunition Act establishes the following offences, among others: (a) Illegal import of weapons (art. 83); (b) Illegal import of ammunition for firearms (art. 84); (c) Illegal manufacture of firearms (art. 85); illegal manufacture of ammunition for firearms (art. 86); (d) illegal export of firearms (art. 89); (e) illegal possession of offensive weapons (art. 93); illegal possession and stockpiling of offensive weapons, explosives, chemical, biological and atomic weapons, mines and experimental weapons (art. 95); construction of clandestine shooting ranges (art. 99). These offences are penalized by six months to six years' imprisonment and other additional penalties.

- Penal Code, Legislative Decree 17-73

The Guatemalan Penal Code establishes the following offences, which are penalized by prison sentences ranging from six months to 15 years and additional financial penalties.

(a) **Illegal armed groups**: Article 398 of the Penal Code defines the offence of "Illegal armed groups", as follows: "Persons who organize, form or direct armed groups or militias other than those of the State shall be sentenced to 3 to 10 years' imprisonment".

(b) **Militancy in illegal groups**: Article 399 of the Penal Code defines the offence of "Militancy in illegal groups", as follows: "Any person who is a member

of the illegal groups referred to in the preceding article (art. 398) shall be sentenced to two to eight years' imprisonment".

(c) **Possessing and bearing firearms**: Article 400 of the Penal Code defines the offence of "Possessing and bearing firearms" by providing that: "The possession and bearing of firearms or weapons of war, or of ammunition or accessories for them, the use of which is reserved exclusively for the Army of the Republic, shall be penalized by six months to three years' imprisonment and a fine of from 50 to 1,000 quetzales".

(d) **Stockpiling arms or ammunition**: Article 401 of the Penal Code defines the offence of "Stockpiling arms or ammunition", as follows: "Any person who possesses or establishes a stock of arms, ammunition or other military supplies, the use of which is reserved exclusively for the Army of the Republic, shall be sentenced to two to six years' imprisonment and a fine of from 200 to 2,000 quetzales. Furthermore, pursuant to article 402 of the Penal Code on "Unauthorized stockpiles", any person who illegally possesses or establishes a stock of arms or ammunition, which is not for the exclusive use of the Army, shall be sentenced to one to two years' imprisonment and a fine of 100 to 1,000 quetzales. For the purposes of this article, a collection of five or more weapons, even when they are dismantled, is considered to be a stockpile of arms that are not for war.

(e) **Trafficking in explosives**: Article 404 of the Penal Code defines the offence of "Trafficking in explosives", as follows: "Any person who illegally has in his possession, manufactures, transports, traffics in or supplies in any form explosive, flammable or incendiary or asphyxiating substances and instruments or devices for causing them to explode shall be sentenced to 10 to 15 years' imprisonment, and the same penalty shall be imposed on any person who, legally being in possession of such substances or instruments, ships or supplies them, in the knowledge that they are intended to be used to attempt to execute or to execute any of the offences included in this title".

International legislation

The Republic of Guatemala is a party to the international conventions that prohibit and limit the supply and use of weapons and related materiel for terrorist purposes:

Conventions to which Guatemala is a party:

- International Convention for the Suppression of Terrorist Bombings
- Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil Thereof

International conventions undergoing the necessary formalities:

- By Decree No. 14-2001, the Congress of the Republic of Guatemala adopted the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction. It is pending ratification.

It is important to note that the principle of the incorporation of international law into domestic law is in effect in our legislation; accordingly, it is within the

competence of the legislature to adopt, before ratifying them, international treaties, conventions and arrangements calling for a commitment on the part of Guatemala, and, once the legal procedures have been completed, they form part of domestic law (arts. 171, para. 1, and 172 of the Guatemalan Constitution).

Paragraph 8. Urges all States to take immediate steps to enforce and strengthen through legislative enactments or administrative measures, where appropriate, the measures imposed under domestic laws or regulations against their nationals and other individuals or entities operating on their territory, to prevent and punish violations of the measures referred to in paragraph 2 of this resolution, and to inform the Committee of the adoption of such measures, and invites States to report the results of all related investigations or enforcement actions to the Committee unless to do so would compromise the investigation or enforcement actions.

The Committee would in addition welcome the submission of information regarding implementation by States of paragraph 8 of resolution 1390 (2002) which invites States to report on investigations and enforcement actions related to States' efforts to enforce and strengthen the measures imposed under domestic laws or regulations to prevent and punish violations of the measures referred to in paragraph 2 of resolution 1390 (2002), unless to do so would compromise the investigation and enforcement actions.

States may include in their reports any additional relevant information. They may also include general observations on the implementation of the resolution, and any problems encountered.

As a Member State of the United Nations, Guatemala recognizes the binding nature of resolution 1390 (2002), and specifically the measures contained in paragraph 2. The legal system and competent organs and authorities described above have the legal means to prevent and punish non-fulfilment of the measures indicated in paragraph 2 of the resolution.

Among the measures taken by Guatemala, the "Office of the Special Prosecutor against Terrorism", attached to the Office of the Public Prosecutor was established through Decision 01-2002 in January 2002; its specific function is to monitor the investigation of crimes linked to terrorism.

As regards permanent preventive measures, the new consolidated list issued by the Security Council pursuant to resolutions 1267 (1999), 1333 (2000) and 1390 (2002) has been incorporated into the control systems of the principal public agencies dealing with the issue of terrorism.

Up until now, no specific cases of violations of the measures referred to in paragraph 2 have been officially reported. However, if it is determined that there are specific cases or signs of non-fulfilment of the measures mentioned, they will be communicated immediately to the Security Council Committee established pursuant to resolution 1267 (1999), provided this does not compromise the investigation or enforcement actions.